

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

J.W., A MINOR, BY AND THROUGH AMANDA WILLIAMS
AS GUARDIAN AND NEXT FRIEND, ET AL. PLAINTIFFS

VERSUS CIVIL ACTION NOS. 3:21-cv-00663-CWR-LGI
3:22-cv-00171-CWR-LGI
Related Cases: 3:23-cv-00243-CWR-LGI
3:21-cv-00667-CWR-LGI
3:23-cv-00246-CWR-LGI
3:22-cv-00171-CWR-LGI
3:23-cv-00250-CWR-LGI
3:23-cv-00478-CWR-LGI

THE CITY OF JACKSON, MISSISSIPPI, ET AL. DEFENDANTS

STATUS CONFERENCE
BEFORE THE HONORABLE CARLTON W. REEVES,
UNITED STATES DISTRICT COURT JUDGE,
AUGUST 16, 2023,
JACKSON, MISSISSIPPI

(APPEARANCES NOTED HEREIN.)

REPORTED BY:

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7 CATORIA PARKER MARTIN, ESQ.
8 CLARENCE WEBSTER, III, ESQ.
9 ADAM STONE, ESQ.
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11 TERRELL S. WILLIAMSON, ESQ.

12 FOR DEFENDANT MAYOR CHOKWE A. LUMUMBA, JR.,
13 AND ROBERT MILLER: JOHN F. HAWKINS, ESQ.

14 FOR DEFENDANTS TONY YARBER, KISHIA POWELL,
15 AND JARRIOT SMASH: CHAUNCY GRAHAM, ESQ.

16 FOR DEFENDANTS MSDH AND JIM CRAIG:
17 GERALD L. KUCIA, ESQ.
18 MEADE W. MITCHELL, ESQ.
19 ORLANDO R. RICHMOND, SR.

20 FOR DEFENDANT TRILOGY ENGINEERING SERVICES LLC:
21 DAVIDE MACELLONI, ESQ.
22 D. JASON CHILDRESS, ESQ.

23 ALSO PRESENT: ARTHUR JOHNSTON, CLERK OF COURT
24 PORFI STOKES, CHIEF DEPUTY CLERK

25

TABLE OF CONTENTS

Style and appearances.....	1-2
Court Reporter's Certificate.....	75

1 **PROCEEDINGS VIA VIDEOCONFERENCE, AUGUST 16, 2023**

2
3 THE COURT: Good afternoon. This is JW versus City
4 of Jackson, et al., 3:21-CV-663. I take it nobody wanted
5 to come to court today. I know when we do these Zoom
6 calls, it's for the benefit primarily of those who are out
7 of state, but nobody wanted to be here with me today. The
8 last time I did it, everybody came here. So it's no
9 problem. Can you hear me?

10 MS. SUMMERS: It's not on.

11 THE COURT: Okay. Because I didn't get any
12 reaction. All right. All right. Ladies and gentlemen,
13 how y'all doing? Still can't hear me.

14 Can you hear me? Wave your hand if you can hear me.
15 Nope.

16 (An off-the-record discussion was held.)

17 THE COURT: Testing, testing. If you can hear me,
18 raise your hand. Okay. Okay. All right. Thank you all.
19 I've been moving my mouth saying ugly things about y'all,
20 some ugly things about me, and nobody responded, so I knew
21 you couldn't hear me.

22 Good afternoon. This is JW versus City of Jackson,
23 et al., 3:21-CV-663, consolidated with several other cases.
24 Thank you all for making yourselves available today. I was
25 surprised that nobody decided -- nobody decided to come to

1 court today. When I do these Zoom calls, you're certainly
2 permitted to come. I don't know -- it's -- primarily I
3 wanted to make sure that those persons who are out of state
4 or if it would be a significant burden for anyone to chime
5 in through Zoom, but I was kind of surprised that I'm the
6 only one here today. But that's fine.

7 But I do have with me in the courtroom the clerk of
8 the court, Arthur Johnston, because we're going to be
9 talking about some other things with respect to these
10 cases, and other staff of the clerk's office here as we
11 sort of flesh out and talk about the issues involving these
12 cases, and I'm going to ask -- and I don't hear any
13 feedback at all on anybody's end, but if you're not
14 speaking, mute your microphones so that we won't encounter
15 any feedback.

16 So we're here primarily to talk about --

17 MS. SUMMERS: Do you want to take a roll call?

18 THE COURT: Oh, okay. Do -- oh, I'm sorry. Let me
19 do a roll call. I'm not sure if that's been done.

20 With respect to the plaintiffs, tell me who's on the
21 line for the plaintiff so I can see you and hear you.

22 MR. STERN: Your Honor, good afternoon. Corey
23 Stern, Melanie Daly, Rogen Chhabra, and Darryl Gibbs for
24 the plaintiffs.

25 THE COURT: Okay. Thank you, Mr. Stern.

1 MR. STERN: Thank you.

2 THE COURT: And who is on for the City of Jackson?

3 Oh, we have a court reporter here, so please make
4 sure you're speaking slowly enough for me to keep up with
5 you in particular but the court reporter as well.

6 MR. WEBSTER: Clarence Webster, Your Honor. We have
7 Tori Martin, Kaytie Pickett, and Adam Stone on.

8 THE COURT: Okay. Tori Martin, Kaytie Pickett, and
9 Adam Stone. Any other --

10 MR. WEBSTER: Oh, and I apologize. And also Terry
11 Williamson, Your Honor.

12 THE COURT: And Terry Williamson from the City of
13 Jackson. Okay.

14 And who do we have for the State of Mississippi?
15 The Department of Health, I guess it is.

16 MR. MITCHELL: Your Honor, this is Meade Mitchell.
17 I've got Rod Richmond and Gerald Kucia here.

18 THE COURT: Okay. And finally -- oh, I'm sorry.

19 MR. HAWKINS: Pardon me, Your Honor. This is John
20 Hawkins. I'm also here for the city defendants.

21 THE COURT: Okay. Thank you, Mr. Hawkins.

22 MR. HAWKINS: Thank you.

23 THE COURT: And then I think the final defendant is
24 Trilogy?

25 MR. MACELLONI: Good afternoon, Your Honor. Davide

1 Macelloni and Jason Childress on behalf of Trilogy.

2 THE COURT: And, Mr. Macelloni, make sure -- I
3 assume you've entered an appearance, but spell your name
4 for the record.

5 MR. MACELLONI: Yes. M-a-c-e-l-l-o-n-i.

6 THE COURT: Okay. Thank you so much.

7 All right. Anyone else on the call who hasn't been
8 identified yet?

9 MR. GRAHAM: Yes, sir, Chauncy Graham. I'm sitting
10 in for The Cochran Firm on behalf of Mr. Terris Harris. I
11 haven't entered an appearance yet, but I will be getting a
12 *pro hac* into the matter. I'm just sitting in for
13 Mr. Harris right now.

14 THE COURT: Mr. Harris was representing the mayor in
15 his individual capacity; is that correct? Or was or is?

16 MR. GRAHAM: Sir, I'm not sure.

17 MS. MARTIN: Tori Martin, the city attorney for the
18 City of Jackson.

19 Terris Harris is actually representing Tony Yarber
20 and Kishia Powell.

21 THE COURT: Okay. Okay. Thank you.

22 Okay. Well, I wanted to -- I realize this case has
23 been filed some time ago, and the Court issued a ruling on
24 its first round of dispositive motions, and since the
25 issuance of that ruling, I think there may have been a

1 couple of other -- at least one other set of filings of
2 cases, I think. And one of the things we wanted to talk
3 about and I've given the parties an opportunity to do was
4 possibly some proposed consolidation order where we could
5 get these cases in a posture to start moving along, and so
6 I wanted to talk with you about that. I gave you all the
7 opportunity to sort of flesh it out and see where you could
8 reach agreement, and I think I heard back from you back in
9 May. I don't think I've heard anything since then, but the
10 parties back in May sent me correspondence telling me about
11 their efforts.

12 Has anything changed since then? And I'll let
13 Mr. Stern speak for the plaintiffs and I'll let Mr. Webster
14 speak for the City of Jackson unless your clients tell you
15 otherwise. And I'll let Mr. Mitchell speak for the State
16 of Mississippi. And obviously I just want to make sure I'm
17 hearing from one person at a time in that regard. And,
18 Mr. Webster, Mr. Mitchell, or Mr. Stern, you can, you know,
19 pass off your opportunity to be heard to one of your
20 co-counsel. I'm not in any way trying to freeze anyone
21 out. And whoever needs to speak on behalf of Trilogy will
22 be able to do so, and so forth and so on. I just don't
23 need more than one lawyer speaking for a defendant at
24 any -- for a party at any particular time, that's all.
25 Okay?

1 So have there been any other -- since the May letter
2 that I received from the parties outlining their
3 differences, your differences, has there been any -- are
4 there any updates?

5 MR. STERN: Your Honor, Corey Stern for the
6 plaintiffs.

7 Nothing has changed from our perspective since the
8 submissions were addressed and sent to Your Honor, I think
9 on May 9th or May 10th of 2023.

10 THE COURT: Okay. Well, then, this is how we'll
11 start, then. I want to hear from the respective parties
12 why you believe the order ought to be the way in which you
13 say it ought to be. But now I have the clerk of court
14 here, and some people -- because I've been thinking about
15 some -- this consolidation issue as well, and I know we've
16 been talking about the word "consolidation." That is
17 because I'm under the impression that the plaintiff has not
18 filed all the -- has not -- there's a potential that the
19 plaintiff might have even more plaintiffs.

20 Is that correct Mr. Stern?

21 MR. STERN: Your Honor, I'm having a little bit of a
22 difficult time hearing you, but I think what you asked me
23 was whether the plaintiffs have filed the totality of
24 claims on behalf of our clients or are there more to come.
25 And if that is the question, we have filed the majority of

1 claimants' cases that we currently have, but we continue to
2 be retained on cases, you know, every week, and so I do
3 anticipate the filing of additional claims, although I
4 think the majority of the claims at this point have in fact
5 been filed.

6 I think that the state defendants and the city
7 defendants are likely on notice, however, of whichever
8 claimants have not yet been filed to the extent that for
9 each of those claimants we have been serving notices
10 pursuant to the Mississippi Tort Claims Act and then we're
11 waiting the requisite time under the statute before
12 actually filing the cases, you know, obviously with the
13 hope that they respond to the -- to the claims and perhaps
14 seek to address those claims by way of the notice rather
15 than by way of the litigation. But thus far, none of those
16 notices have been responded to, so we've been filing after
17 the requisite time period has expired.

18 THE COURT: With respect to that issue with respect
19 to the state tort claims process, does -- that process
20 does -- and I'm speaking to the state defendants now and
21 the municipal defendants, because obviously there would
22 have to be a state tort claims notice to the extent you're
23 filing with any of these governmental entities. Doesn't
24 the MTCA allow -- I know the purpose is -- is for the
25 governmental unit to have an opportunity to investigate and

1 do whatever it needs to be done to evaluate the claim.

2 Now, I can't imagine the City of Jackson or the
3 State of Mississippi when they received any one of these
4 claims intends to pay the claim. I can't imagine that.

5 But if I'm wrong, I'm wrong.

6 So -- and I know you have a full 90 days or so in
7 which to do your evaluation, but to move these cases along
8 so that we'll know exactly how many people we have at any
9 given time, does it -- I can stand to be corrected, so I
10 don't know everything. I'm not trying to suggest that at
11 all. But if the State or the City of Jackson's going to
12 deny the claim, why not deny it as soon as it is received?
13 Is there a reason why?

14 I mean, because, of course, I think we want to make
15 sure that these cases move along, and that would help move
16 it along, I think, at least by 90 days; right?

17 Is it -- is there -- I mean, do the governmental
18 units think that they might be waiving something or being
19 accused of having not evaluated a claim properly if it's
20 denied, say, you know, within a week or ten days after
21 having received it? I'm just trying to think about how we
22 can move the case along from that perspective.

23 Is that a possibility from the -- I don't know if
24 the governmental units have been thinking about that or
25 even have thought about it.

1 Mr. Webster.

2 MR. WEBSTER: Yes, sir, Your Honor. And I apologize
3 for interrupting.

4 We have not had those conversations. That is an
5 issue that we can raise with the city, but at this point I
6 don't think I can intelligently speak on that without first
7 talking to the client.

8 THE COURT: Okay. And what about the state
9 defendants, Mr. Mitchell?

10 MR. MITCHELL: Same, Your Honor. We really just
11 haven't given any consideration or thought to shortening
12 the 90-day period, but we can certainly talk to the State
13 about it.

14 THE COURT: So do we know, Mr. Stern, the number of
15 tort claims notices you have outstanding for which you have
16 not -- you know, how many out there that are outstanding
17 that you've served on to the state defendants? Not the
18 ones that's in your office right now.

19 MR. STERN: Your Honor, if you can give me a couple
20 of minutes while we're on this call, I can get you the
21 exact number, but I believe it's less than 150.

22 THE COURT: Okay. So -- okay. So I guess I should
23 tell you why the clerk of the court is here, because this
24 is going to help frame how we look at this case. We've
25 been talking about consolidation and how consolidation

1 might work. The clerk and I have been talking about, yes,
2 consolidation for the cases might work, but I am thinking
3 about the possibility of severing the cases in a sense that
4 each might have a separate sort of -- severing the cases.
5 Instead of having one case with 2400 plaintiffs, possibly
6 having 2400 cases.

7 Now, in order to do that, though, it is my hope that
8 I won't overburden the staff here at the clerk's office,
9 but I also don't want to overburden the lawyers, and we've
10 been trying to think about ways in which on your side of
11 the ECF stuff you wouldn't overburden you or your staff
12 with making sure that if the cases are ultimately severed
13 and how rulings might affect those cases and all that kind
14 of stuff and any filings in any individual case being
15 applicable to the other cases, how -- you know, we don't
16 want you to use 2400 man-hours a day of filing in -- or I
17 guess globally 2400 hours in a period of time, you know,
18 filing documents, doing stuff that sort of overburdens your
19 office.

20 So as you talk about how you envision and the
21 differences that you have between it -- because I know
22 there's some objection from some of the defendants to what
23 a short-form complaint might look like, what may be a short
24 form answer, why have it, whether the -- and I think one of
25 the big issues that the plaintiff has and that the parties

1 have is a disagreement with respect to whether or not any
2 new defenses might be raised in later cases that might not
3 apply on this day.

4 So I want to hear from you all today about the --
5 you know, what is it about the disagreements that you
6 cannot come to an agreement on, but also now knowing that
7 I'm thinking about severing these cases -- because, you
8 know, obviously I've seen the parties or at least somebody
9 place out there the notion of a bellwether trial, and
10 obviously I think that that is going to have to be the case
11 that there be some sort of trial of a representative group,
12 a small group possibly or whatever. I just say a
13 bellwether because the first trial might dictate how any
14 other trial might proceed, so I'm calling it bellwether in
15 that sense.

16 I'm not necessarily suggesting that the bellwether
17 trial -- well, obviously it will let the parties know what
18 this community thinks about these claims and all of that
19 kind of stuff, and so we want to make sure -- obviously
20 these cases cannot be tried all at once. That's number
21 one.

22 Number two, how do we find a representative sample
23 of cases to try, and when can that trial necessarily occur,
24 and how long might it take, and how might that look like?
25 That is on down the road. We need to get discovery going

1 on right now and how that discovery might apply to each
2 case or individual cases or whatever.

3 So for purposes of today, I want you all to argue
4 the benefits of your views on what the consolidation order
5 should look like. But -- and I know you didn't hear for
6 the first time just today, basically, this notion of
7 severing, but I do want you to think about the severance
8 issue as you talk about your view of what the consolidation
9 order ought to be.

10 So starting with you, Mr. Stern.

11 MR. STERN: Thank you, Judge.

12 Obviously we believe that consolidation for purposes
13 of discovery is the only way to prosecute these cases. If
14 on the one hand every claimant has their own case but on
15 the other hand all the claimants together are going to be
16 required to take the same deposition of the governor, to
17 take the same deposition of the head of the Department of
18 Health, to take the same deposition of the engineering
19 defendants and the folks that were on the ground in Jackson
20 during the period of time when the decisions were made,
21 that would be not just inefficient but it would be an undue
22 burden on deponents, on witnesses, on the defendants, and
23 frankly on the Court and the officers of the court who
24 would be performing and undertaking those procedures.

25 So the facts as alleged in the complaint are the

1 same, essentially, for all of the children who are the
2 plaintiffs in these various cases, so we do believe that
3 consolidation is appropriate. I still don't fully grasp or
4 even somewhat grasp why the defendants are insisting upon
5 having individual case numbers for every plaintiff other
6 than to take 2400 depositions or undertake 2400 -- I'm
7 using 2400 because that's the number Your Honor used, but
8 let's imagine it's 2400 kids and 2400 plaintiffs. It's not
9 efficient to begin the process of undertaking affirmative
10 discovery on 2400 children and their families. That would
11 take at least a decade, I think, and that's if we worked on
12 nothing but this case every day between now and ten years
13 from now. And so I don't think we can have it both ways.

14 If there's going to be individual cases for each of
15 these kids and the defendants are going to undertake to
16 depose everyone's mom, everyone's doctor, they're going to
17 do home inspections of every one of these children, I
18 honestly don't know how they can afford it. It's odd to me
19 that the city is proposing that, because in -- what I know
20 about the city, I don't believe there's insurance in this
21 case. And all I've heard about is from various folks how
22 this is a fool's errand in terms of going after the city,
23 because at the end of the day, the city has no money.

24 So if the city, separate from the State, is willing
25 to undertake discovery as to 2400 individual children, then

1 I'm not sure that the city is in the financial straits that
2 has been reported in the media or that has been told to me
3 even by counsel in this case.

4 If we were to undertake a bellwether process, it is
5 possible to select a random number of the 2400 and conduct
6 discovery on them. Not 100 kids that I pick or 100 kids
7 that Mr. Mitchell picks or Mr. Webster picks or anybody
8 picks because we like them or we don't like them, but it
9 makes more sense, and in mass torts like this, the prudent
10 thing that's typically done is to undertake some discovery
11 for the defendants of plaintiffs on a random set with an
12 eye toward a bellwether trial with the hope that if you
13 pick enough, that it will be representative of the whole.

14 So, yes, we think everything should be consolidated
15 for the purposes of discovery. No, we do not think that
16 while one deposition is taking place every couple of weeks
17 of government employees and private actors, at the same
18 time depositions are taking place every single day of every
19 single child and their parents, that would be extremely
20 inefficient.

21 And the reason why it, I believe, still is wise for
22 the Court to enlist the assistance of a special master,
23 whether it's one of the individuals that the defendants
24 proposed of the nine that they proposed or one of the two
25 that we proposed or a combination of both or someone or

1 someones that Your Honor has considered, you know, that
2 none of us have. That person would hopefully have some
3 experience in dealing with cases that involve numbers like
4 these or greater and can, without a level of advocacy which
5 I have for my clients and which Mr. Mitchell has for his
6 and which Mr. Webster has for his but, rather, with an eye
7 toward impartiality and efficiency for the Court and for
8 the court staff, including your clerk who's there, can help
9 create a structure that's both meaningful in finding
10 information and discovering information, meaningful in
11 pushing these cases swiftly toward a resolution, be it
12 trial or otherwise, and at the same time utilize the
13 experience that they have in creating a system that doesn't
14 disadvantage anybody, but at the same time, creates
15 efficiencies for everybody.

16 I still don't know, like, if there's a case number
17 for every child, what does that mean? I mean, does that
18 mean that at that point in time discovery gets propounded
19 on every single child? Because that's -- that would be the
20 first time I've experienced that in a -- in a case this
21 size.

22 There's other ways to get information to the
23 defendants besides undertaking discovery in 2400 cases.
24 There's plaintiff fact sheets that can be submitted. Those
25 can be negotiated amongst the parties. Those can be tiered

1 in phases, so that they receive them not all at once,
2 because they wouldn't be able to do anything with 2400 fact
3 sheets at one time, but maybe 100 at a time every few
4 months or 50 at a time every few months.

5 And, again, this is why I think it would be helpful
6 to have an impartial, unbiased nonadvocate to talk more
7 about efficiencies than someone in my shoes who obviously
8 has reasons why I want things a certain way or Mr. Mitchell
9 or Mr. Webster who have reasons why they want things a
10 certain way.

11 THE COURT: You mentioned, Mr. Stern -- I mean, just
12 because cases have numbers doesn't mean that -- I mean,
13 through some order that this court can do, I mean, the
14 Court can fashion some sort of thing -- it doesn't matter
15 how many plaintiffs there are. I mean, the Court could
16 prescribe that discovery only advances in a certain number
17 of cases, I mean.

18 I'll hear from the defendants, but the defendants,
19 like you, you have a right to seek discovery from the state
20 actors and the city actors and all that. I'm pretty sure
21 I'm going to hear from the other side, Judge, we need to be
22 discovering -- taking discovery from the various
23 plaintiffs. Now, how might that discovery look and what
24 all it will be, I don't think that -- well, don't let me
25 speak for the defendants. Let me hear from you.

1 I don't think -- I certainly hope the defendants did
2 not envision propounding interrogatories to 2400 people as
3 soon as this court decides how this case is going to
4 proceed. I don't know. Maybe you did. But I'll hear from
5 whenever defendant wants to go next.

6 MR. MITCHELL: Your Honor, this is Meade Mitchell.

7 And we do certainly agree that consolidation for the
8 purposes of pretrial motion practice and discovery is the
9 right way to go. For a lot of reasons that Mr. Stern just
10 said, we do think that it is incredibly important that we
11 have either -- either you call it severance or you call it
12 assigning numbers to each individual plaintiff. We think
13 that's -- you know, this is the beginning of this case.

14 This case is probably as -- the people here in my
15 office said if this were an MDL, it would be the 15th
16 largest MDL in the country, and the case is probably going
17 to have to proceed as most MDLs proceed, and in most MDLs
18 that we've been involved in, the plaintiffs are assigned
19 individual numbers, and that's because over the course of
20 time there will be filings that relate only to individual
21 plaintiffs and they will not relate to all plaintiffs, and
22 that way, instead of everything being filed in one master
23 docket with massive confusion, if it relates to only an
24 individual plaintiff, it will be filed there. If it
25 relates to the plaintiff and the overall case, it will be

1 filed in the master docket as well as in the individual
2 docket, and we think that it's incredibly important for the
3 Court to be able to keep up with how these cases are moving
4 forward and for us to be able to keep up with what is
5 happening for each individual plaintiff as it goes forward.

6 As it pertains to what -- at least what Meade
7 Mitchell and the department think should be the next steps,
8 no, we don't anticipate that we would file discovery as to
9 2200 plaintiffs, but what we do think is that there would
10 be a need for certain *Lone Pine* information, and *Lone Pine*
11 is a decision that requires all plaintiffs to come forward
12 with certain basic information to show that they have
13 standing to be in this court, proof of injury, proof of
14 exposure. We believe that is critical.

15 I mentioned that when I argued the motion, Your
16 Honor, on the MTCA issues, that that was not an MTCA notice
17 and I thought it should be, because I think that if these
18 children do not have a cognizable injury that has been
19 diagnosed by a doctor, cognizable exposure, that their
20 claims aren't ripe pursuant to Article III, and that's
21 something that we would want, and that would be those fact
22 sheets or the -- you call them -- I would call them a *Lone*
23 *Pine* order sheet would be filed in each of the cases.

24 What we would think that would happen next is for
25 those plaintiffs that survive, that they have the standing

1 information, that we would negotiate some sort of a fact
2 sheet with the plaintiffs and the fact sheet would be
3 provided. And then after the fact sheets, the parties
4 would select -- the defense would have a selection and the
5 plaintiff would have a selection and we come up with a
6 bellwether group for full case development, much smaller.
7 Much smaller. Not the full component of the cases.

8 That's the way I've seen it done in MDL cases. It's
9 reasonable. It would require the plaintiff to come forward
10 with the basic information showing that their clients have
11 a right to be in front of this court, and then it would
12 give us -- for those that survive, it would give us the
13 base information that we would need to be able to select a
14 bellwether group.

15 And as for the order that we --

16 THE COURT: Let me interrupt you right there,
17 Mr. Mitchell.

18 MR. MITCHELL: Absolutely.

19 THE COURT: Let me ask this question: I assume the
20 governmental entities are not getting this information on
21 the tort claims notice, because if you're not getting it
22 from a tort claims notice perspective, that's a reason for
23 denial, I presume. So I assume you're not getting this at
24 this stage of the game?

25 MR. MITCHELL: All we get is their addresses at this

1 stage of the game in the tort claims notices. Yeah.

2 THE COURT: Okay.

3 MR. MITCHELL: Did I answer your question, Your
4 Honor?

5 THE COURT: Well, I guess -- I mean, yeah. I mean,
6 you're not getting -- you're not getting any level of any
7 indication of injury or anything else other than names and
8 addresses?

9 MR. MITCHELL: No. Well, that's -- I should be more
10 clear, because I'm sure Mr. Stern will say it. In each one
11 of the MTCA notices, the plaintiffs have the same statement
12 about each plaintiff that says they suffered one of the
13 following injuries. It's a statement in each letter.
14 Every single one of them has exactly the same statement.
15 But that's not what we're looking for in *Lone Pine*. We'd
16 be looking for an expert affidavit showing that they have
17 cognizable injury. You know, a boilerplate statement does
18 not satisfy a *Lone Pine* criteria for showing injury and
19 standing to pursue a lawsuit.

20 MR. STERN: I --

21 THE COURT: Before you get there, then I guess this
22 sort of goes back to one of the earlier questions that I
23 asked: If you're getting the same sort of notice for each
24 of the plaintiffs, why do the governmental entities need
25 90 days to reject it? I just put that out there.

1 MR. MITCHELL: Your Honor, you raise a very good
2 question. You raise a very good question. It's just one I
3 haven't given any thought to. We were just -- you know,
4 the government's position has always been they were going
5 to -- we're going to require compliance with the MTCA
6 90-day notice rule, and I've never given any real
7 consideration of -- of an outright denial in advance of
8 that. You raise a good question, though, and I will take
9 it back to my client.

10 THE COURT: Okay. I know Mr. Stern wanted to
11 respond, but I'm going to move on to the city to -- counsel
12 for the city to the extent --

13 MR. HAWKINS: Thank you.

14 THE COURT: Mr. Mitchell, were you through? I'm
15 sorry. Were you through, Mr. Mitchell?

16 MR. MITCHELL: Yes, Your Honor. And I wanted to say
17 this. You know, I -- Mr. Stern and I kind of -- we knew we
18 were going to have disagreements on what the discovery
19 should look like, you know, after we get past this early
20 stage, and one of the things that we had talked about as we
21 put together this -- so as not to overwhelm the Court is
22 that we had proposed and I think we kind of agreed that we
23 were going to try and see if there was anything that we
24 could work on in good faith together moving forward. We
25 haven't had that opportunity, so I'm throwing a lot of this

1 information Mr. Stern -- he knew we were going to have
2 disagreements, but I'm throwing a lot of information at him
3 cold, and I just want you to know that.

4 THE COURT: Well, let me follow up, then, and just
5 ask this one question: You indicated agreed fact sheets at
6 some -- I think you've given one opportunity to put it
7 forth, I think is what I heard, and then come back with
8 even, what is it, second fact sheets? I'm just trying to
9 figure out why can't we get an agreement on what a fact
10 sheet might look like on the very front end?

11 MR. MITCHELL: You could. You know, fact sheets
12 are -- that I've seen, and certainly the ones that I've
13 seen in Flint and I've seen in other cases, are really
14 pretty detailed. You know, you'd have authorizations and
15 medical records and a lot of other things that would be
16 attached to a fact sheet. That's a lot of work. You would
17 stage it out. It takes time.

18 But the *Lone Pine* stuff that I was talking about
19 would be far more detailed. It would be a very narrow
20 subset of, you know, a doctor diagnosing injuries. It's a
21 much more narrow set of material that you would put forward
22 to show that they have standing to be here. And then if
23 they didn't survive, if they don't have that information,
24 they wouldn't have to provide further supplemental detailed
25 fact sheets. That was why I was -- you know, that's why I

1 had said that, Your Honor.

2 THE COURT: Okay. And, again, I'm just following up
3 with some of the words you used. Standing to be in court,
4 couldn't that matter be taken up after the fact sheets are
5 presented or -- it sounds like you're saying if -- well,
6 obviously if you don't have those fact sheets, you don't
7 have standing, but I think you're also saying you don't
8 have standing without any of the fact sheets, if you see
9 what I'm saying.

10 MR. MITCHELL: Well, yes, Your Honor I do. And the
11 answer to your question is you could have a very, very
12 detailed fact sheet that all the plaintiffs could have to
13 submit, and you could just do it in one step, or you could
14 do it in two. The information that the *Lone Pine* decision
15 that's been adopted by the Fifth Circuit put forward --
16 requires a lesser level of information than is in a
17 traditional fact sheet, and so at least as I was thinking
18 through the process, we would ask for the lesser level of
19 information first through the motion for a *Lone Pine* order
20 from the Court, which would be injury, diagnosing
21 information, exposure information, and testing information.

22 And then if they satisfy their standing criteria,
23 they wouldn't have to provide that again. They would
24 provide a more -- a greater -- greater detail on who all
25 their doctors were and providing the authorizations for the

1 discovery of medical records, and then we'd stop. Then
2 we'd pause, and then we would try to pick a bellwether
3 group of all that were left to do full case workup on.

4 Did I explain that well enough, Your Honor --

5 THE COURT: Yes.

6 MR. MITCHELL: -- or am I still leaving something
7 out?

8 THE COURT: No, no. You did. I was just thinking
9 about the sort of standing argument that a defendant always
10 has: At any point in the case, the Court can determine
11 whether or not those persons actually have standing to be
12 in court --

13 MR. MITCHELL: This -- when I talk --

14 THE COURT: Yes.

15 MR. MITCHELL: Your Honor, I'm sorry. I
16 interrupted.

17 When I talk about this *Lone Pine* information, kind
18 of the key case on this is a case called *Lore versus Lone*
19 *Pine* out of New Jersey, and it was adopted by the Fifth
20 Circuit in *Acuna versus Brown & Root, Inc.*, and it
21 requires --

22 THE COURT: Give me the *Acuna* cite. I'm familiar
23 with it. Give me the cite.

24 MR. MITCHELL: *Acuna versus* -- I'm sorry. *Acuna*
25 *versus Brown & Root, Inc.*, 200 F.3d 335 (5th Cir. 2000),

1 and in that case, the judge entered a *Lone Pine* order that
2 said that the plaintiffs had to submit affidavits listing
3 the injuries that the plaintiffs' expert will opine --

4 THE COURT: Wait, wait, wait, hold on. Remember,
5 we -- remember, we have a court reporter present.

6 MR. MITCHELL: I've got a court reporter here. I'm
7 going to -- I feel like I'm pushing too far with
8 information I haven't discussed with Mr. Stern, but this
9 is -- this is -- you've asked about it, and this is what
10 we're interested in. And this has also been adopted by --
11 in our state multiple times. Judge Parker in *Abner versus*
12 *Hercules*, which is -- and *Ashford versus Hercules*, two
13 decisions by Judge Parker employed this *Lone Pine* analysis,
14 so I think --

15 THE COURT: Give me the cite in the *Hercules* cases.
16 Is that the FLSA case?

17 MR. MITCHELL: It's -- it involved Hercules, and its
18 cite 2014 Westlaw 5817542, and that's a 2014 case. And
19 then there is -- the second *Hercules* case by Judge Parker
20 is 2015 Westlaw 6118387.

21 And I think there are others, Judge, in which this
22 *Lone Pine* analysis has been applied. And basically it just
23 says to show Article III standing, you know, to bring their
24 suits, that the plaintiffs had to submit affidavits listing
25 the injuries that the plaintiffs' expert claimed were

1 caused by the exposure, specifying the materials that
2 caused the injury, describing the times and circumstances
3 of the exposure. It's basic information that shows they
4 have a right to be in court. It's less detailed than what
5 I would traditionally envision a plaintiff fact sheet to
6 be. It's base information that says they have a right to
7 be here.

8 THE COURT: Okay. Thank you, Mr. Mitchell.

9 MR. MITCHELL: You're welcome, Your Honor.

10 THE COURT: Mr. Webster?

11 MR. WEBSTER: Yeah. And, Judge, I'd echo and
12 co-sign what Meade said. I would point out that in that
13 Acuna case, they were dealing with over 1600 (AUDIO GAP) --

14 THE COURT: Make sure you're staying close --
15 Mr. Webster, make sure you're staying close to your
16 microphone. You're fading out.

17 MR. WEBSTER: Yes, sir. I hope you can hear me
18 better now. The one thing I would add to what Mr. Mitchell
19 said was that in that Acuna case, there were over 1600
20 plaintiffs, and the Court required the affidavit setting
21 forth -- specifying the injury or illness that was caused
22 by the exposure, the dates of exposure, the means of
23 exposure, and the scientific and medical basis for expert
24 opinion.

25 Mr. Stern made a lot of representations about what

1 the city wants, and the city has had no conversations with
2 Mr. Stern as to what it wants with regards to these
3 individual case numbers. But it is something much more
4 consistent with what Mr. Mitchell set forth, which is in
5 litigation like this, which is novel litigation -- there
6 are no verdicts or judgments in a case like this, and the
7 science is disputed -- plaintiffs must provide some basic
8 information across the board, all of them, to show that
9 they have a case. And that's their requirement under
10 Rule 11, and the Fifth Circuit has adopted that in *Acuna*,
11 and it's been adopted in the state of Mississippi. This is
12 not a controversial request.

13 Once all that information has been presented, then,
14 yes, it may be time to move on and discuss a bellwether
15 process.

16 The one last thing I'll say is -- is that this Court
17 encouraged the parties to engage in settlement discussions,
18 and it is grossly inappropriate for plaintiff to then use
19 things that were discussed in that -- in those settlement
20 discussions to then dictate how this case should proceed
21 should those settlement discussions prove unfruitful. I do
22 not think that is appropriate.

23 And not to rehash anything, but I do believe that
24 the cases do need -- we do believe that the cases do need
25 individual case numbers and this basic information before

1 we can move forward to further discovery with a bellwether
2 process.

3 THE COURT: Okay. Mr. Childress, you want to weigh
4 in? I'm sorry. Mr. Macelloni. I'm sorry.

5 MR. MACELLONI: I have no issues with Mr. Childress
6 speaking on behalf of Trilogy, but I'll keep it brief.

7 Trilogy agrees with both counsel for the State and
8 the City of Jackson in what they have proposed.

9 THE COURT: Okay.

10 MR. STERN: May I respond, Your Honor?

11 THE COURT: Yes. Yes. I was thinking if I had any
12 other questions from the defendants right then, but, yeah,
13 you can go ahead and respond, Mr. Stern.

14 MR. STERN: First of all, I have no idea what
15 Mr. Webster is talking about. I have no clue what he's
16 talking about about appropriateness or inappropriateness of
17 settlement discussions. The idea that the city has no -- I
18 had about 30 seconds' worth of settlement discussions with
19 Mr. Hawkins, and there was no discussion -- there was no
20 actual discussion of settling anything.

21 I didn't learn from Mr. Hawkins during a
22 conversation that the city was broke. I learned it from my
23 own research. I learned it from listening to city council
24 meetings. I learned it from reading all of the public
25 information, and if somebody wants to dispute the fact that

1 it's public that the City of Jackson has no insurance and
2 has no money, I will stand corrected, and I'd be very
3 grateful to find out that they have more than anybody
4 thinks. So I have honest to God no idea what Mr. Webster
5 is talking about.

6 Mr. Mitchell, in all of our conversations we've ever
7 had, has never even uttered the word "*Lone Pine order,*"
8 never once, but what I've heard him say today is that we
9 essentially shouldn't do discovery until plaintiffs show
10 that they can survive, until plaintiffs show that they have
11 a right to be in front of this court, and that asking them
12 to get medical affidavits, which means evaluations, expert
13 testimony, that is a lesser burden than what's generally
14 used as a fact sheet in MDLs.

15 So he said that he's doing us a favor by only
16 requiring 2400 kids to go get evaluated by experts, to have
17 those experts present affidavits to the Court so that we
18 can prove that they survive and have a right to be here.
19 A, I don't know why we had six hours of argument and about
20 four months of briefing when it came to the motions to
21 dismiss if even after Your Honor's order our clients still
22 have not survived and have not shown that they have a right
23 to be here.

24 The underestimation in statements about the
25 Mississippi Tort Claims Act notices flies in the face of

1 Your Honor's own review of those documents during that six-
2 or seven-hour hearing we had, at which point you said
3 something to the effect of in my own private practice, I
4 have not seen any of these that are so detailed.

5 It's not my fault or my clients' fault that the
6 conduct of these defendants is so uniform that it has
7 affected so many individuals that the claims themselves
8 appear to mirror one another. But in terms of the
9 specificity required under the law to have standing and to
10 have a right to be in front of this court, Your Honor's
11 ruled on that. It's an 80-something-page order, and it was
12 well written, and we lost some and we won some, and they
13 lost some and they won some.

14 I would submit to you that in most instances when
15 most *Lone Pine* orders are issued, it's after a settlement
16 has been put in place and you want to make sure that folks
17 actually qualify; and the idea of causing our plaintiffs
18 subsequent to a motion to dismiss to now have to prove they
19 have to survive or to prove that they have standing to be
20 in front of this court flies in the face of the activity
21 and the exercise that we undertook, Your Honor included,
22 for about nine months, and so I don't understand it.

23 But what I'm hearing is we should put the liability
24 of this case on ice. I think what Mr. Mitchell and what
25 Mr. Webster are saying is we should not do anything in this

1 case until we get an affidavit from every child's
2 pediatrician, neuropsychologist, and economist to inform
3 them that, A, they've been injured; B, what the cause of
4 that injury; and, C, what their damages are, and then and
5 only then will this court decide if our clients have
6 standing.

7 And if that's the case, I would submit to you that's
8 never been done before in a case like this. And I would
9 also submit to you that everyone has wasted everyone's time
10 by ways of motions to dismiss if all they're trying to do
11 now is get a second bite at the apple, just under a
12 different theory. Yes, we could have liability because
13 Your Honor says the law said so, but, no, we can't have
14 liability because we didn't get 2400 affidavits, one each
15 from three different doctors, to prove --

16 THE COURT: Slow down -- wait, wait. Mr. Stern,
17 slow down. Slow down, Mr. Stern. I know you're excited.

18 MR. STERN: The biggest beneficiaries of this
19 exercise that Mr. Mitchell proposes are the lawyers for the
20 defendants, the hours they will bill, and the doctors who
21 will be paid hundreds of thousands of dollars on the front
22 end to evaluate children prior to Mr. Mitchell and
23 Mr. Webster ultimately filing summary judgment motions on
24 liability under the same theories that they presented Your
25 Honor on their motions to dismiss but after discovery may

1 be taken if our clients can survive and prove they have a
2 right to be in court.

3 If Your Honor is even considering the *Lone Pine*
4 order, we would beg for the opportunity to brief it, to
5 evaluate the cases that Mr. Mitchell has cited for the
6 first time. We've had since May 10th, 2023, so almost four
7 months -- or three months at this point in time for someone
8 to suggest to me that this was the road that they intended
9 to take with Your Honor.

10 We have every opportunity -- we should have every
11 opportunity to oppose this in a more meaningful way, citing
12 the cases that are not in line with those that they cited,
13 and testing the veracity of what has been proposed those
14 cases stand for.

15 THE COURT: What I'm trying to get to is a path to
16 go forward and how does that path look with respect to the
17 current cases that I have as well as the future cases that
18 I will get, because, again, you say there are probably less
19 than 150 that are before the governmental entities on tort
20 claims notices. I assume you have an equal or less number
21 in your office still, and you're signing up people every
22 day, or --

23 MR. STERN: So I have an answer for you on that. We
24 currently have 80 cases that have not been filed, and we
25 have not yet sent notices of claims under the Mississippi

1 Tort Claims Act for those 80 cases. Other than the 80,
2 every case we have has now been filed before Your Honor.

3 THE COURT: Oh, including the ones -- the MTCA cases
4 that currently exist before the --

5 MR. STERN: There are no more pending -- there are
6 no more claims that have been presented to the city or the
7 State that are pending a 90-day assessment and resolution.
8 We know that there's no assessment and there's no
9 conversations. It's just a waiting game once we send them,
10 but there are none that are in that posture.

11 THE COURT: Okay. So what do we know at this point
12 in time? What is the current number of plaintiffs that are
13 in federal court right now?

14 MR. STERN: Give me one more second. I have it.

15 MR. MITCHELL: Your Honor, I believe it's -- with
16 the last filing, it's approximately 2,140.

17 MR. STERN: I'm looking at an Excel spreadsheet.
18 It's just not as easy for me to --

19 THE COURT: Give or take 100 or so, Mr. Stern, you
20 believe that's the number?

21 MR. STERN: I have a slightly different number, but
22 it's in the ballpark.

23 THE COURT: Okay.

24 MR. STERN: Ours are over 2200, but I think it's
25 inclusive of the 80 we have not yet sent notices for, so

1 Mr. Mitchell is probably correct.

2 THE COURT: Okay.

3 MR. STERN: But I feel like maybe my emotion got the
4 best of me. I want to be very clear for what I'm hearing
5 Mr. Mitchell say so that he can confirm for the Court that
6 I'm not misstating this.

7 In order to prove exposure, injury, and some level
8 of damages in every lead poisoning case that I have ever
9 handled, whether it's a case for one child in The Bronx,
10 New York, or for 5,000 children in Flint, Michigan, we need
11 an expert neuropsychologist or pediatric neurologist to
12 spend about four to five hours with the child to do a
13 full-out assessment.

14 We then need a pediatrician who specializes in
15 causation to do his or her own evaluation of the child, as
16 well an evaluation and an assessment of the conditions in a
17 child's life to be able to give an expert opinion about
18 those neuropsychological developmental issues being caused
19 by lead.

20 And then we need to hire an economist to do a
21 valuation of that child's lost earnings in addition to
22 getting testimony from family members and schoolteachers
23 and aunties and uncles to make a determination about
24 noneconomic damages.

25 Those are the things that I think Mr. Mitchell and

1 Mr. Webster and all of their colleagues believe we need to
2 show, that we are required to show this court at this
3 stage, for them to first determine if any of those folks
4 survive and have the right to be in front of this court.
5 And it's so common and so normal that they actually have to
6 file a motion to ask you to enter an order that doesn't
7 exist automatically under the law to make it so, and all of
8 those things are less invasive, easier, and simpler than a
9 plaintiff's fact sheet.

10 I just want to make sure and confirm that those --
11 me putting it in my words is the same thing that they're
12 saying we need to show this court if they file a motion and
13 Your Honor enters an order approving it.

14 MR. WEBSTER: This is Clarence Webster.

15 I think what we're asking the Court to do is enter
16 an order consistent with what the Fifth Circuit has already
17 done in the Acuna case, and, you know, we've not had any
18 discussions with Mr. Stern on that. Maybe this isn't the
19 appropriate time to have this back-and-forth with Mr. Stern
20 on these issues, but what we're proposing is what has been
21 adopted by the Fifth Circuit, which is where we're sitting
22 right now.

23 THE COURT: Well --

24 MR. MITCHELL: Your Honor --

25 THE COURT: Go ahead, Mr. Mitchell. No, no. Go

1 ahead, Mr. Mitchell.

2 MR. MITCHELL: Not everything that Mr. Stern
3 mentioned would be required. You know, you don't have to
4 have economic reports and all these family member
5 interviews to show standing under the Acuna case.

6 And I will say this. Mr. Stern said I'd want an
7 opportunity to brief it. I fully expect that he would be
8 given an opportunity to brief it, Your Honor.

9 In fact, you know, you raised these issues, and it
10 brought it up for the first time under the proposed case
11 management order that Mr. Stern, Mr. Webster, and
12 Mr. Macelloni and I submitted. This was the next step in
13 the discussions. We haven't had any discussions on these
14 points yet. We were going to, and I knew we were going to
15 disagree, but I would fully anticipate that Mr. Stern would
16 be allowed the opportunity to brief it, but, no, we're
17 asking for what the Acuna case says, which is diagnosis of
18 injury. And if they don't have diagnosis of injury, Your
19 Honor, they shouldn't be allowed to sue, period.

20 THE COURT: Okay. Well, that sort of begs the
21 question of why I'm here, because I assume no matter what
22 road we go down with fact sheets or detail sheets or
23 whatever we have, there will be some plaintiffs to survive.
24 There are going to be. What number of plaintiffs, I don't
25 know. But assuming 25 percent of them survive, that's a

1 fourth of 2,000. That's 500 still. We still need to find
2 out, figure out how those 500 cases will proceed in a
3 consolidated fashion, or the thing that I wanted to bring
4 to your attention on is maybe severing, having some sort of
5 severance order. But I -- and I wanted to raise that issue
6 with you because I've heard from you, and I understand the
7 implications and making sure that everybody rights are
8 preserved as to any individual -- you know, some pleadings
9 or motions might only apply to a particular person or a
10 particular entity and how that might be done.

11 But still, at the end of the day, what's going to
12 benefit the Court and the parties is to make sure that
13 there's some discovery, that discovery begins, and -- you
14 know, because you all have not been before a magistrate
15 judge. We've not gotten a -- I did ask you to start
16 thinking about the possibility of a special master. That's
17 something that is still on the table.

18 If this were a regular case, obviously a special
19 master is not even in the equation, but I don't want to
20 overburden any of our magistrate judges with any one case
21 that will prevent that person, he or she, from being able
22 to do all the work that they are asked to do around here.

23 So I guess no matter how we move forward, we know
24 that there are going to be some cases left. I guess I want
25 to go to the abstract world and say: Assuming there are

1 cases that are left, how do we consolidate, unpack them,
2 how do we sever them? How do we move forward with
3 discovery? And that's what I kind of want to move to next.
4 How do we move forward?

5 Are the plaintiffs saying -- are the defendants
6 saying that the fact sheets must be so detailed before a
7 person even has a right to even be in court that any injury
8 that they would have is speculative at this point, for
9 example, and we should not have to go through discovery to
10 see what they have or to learn what they have; they should
11 have to give that on the front end? So I need you all to
12 help me get to the point of discovery. Assuming that we
13 have 500 cases left, how do we move those 500 cases?

14 I see the fundamental disagreement that the parties
15 have in their versions of a consolidation order, and I'm
16 not glossing over that at all, but we have to find a way
17 for the parties to be able to move these cases, and we have
18 to figure out how we could either do it in a consolidated
19 fashion or in a severed fashion so that -- and, again, you
20 know, I'm sympathetic. I know you all are sympathetic to
21 the Court and not overburdening the Court. The Court is
22 also sympathetic to you all. I don't want you to have to
23 go out and have staff to plug in stuff on every pleading
24 that is filed. I don't know. We need to talk about that.

25 So how do the parties envision discovery being the

1 next step?

2 MR. STERN: Your Honor, first and foremost, I
3 will -- you will -- there will be 2142 plaintiffs that
4 survive since survival is now what's being discussed in
5 terms of their claims, despite having survived multiple
6 motions to dismiss. There's not going to be 500. There's
7 not going to be 700. There will be 2,142, which is the
8 number that as of today has been filed, and they will all
9 survive regardless of what the Court initiates, puts in
10 place, and requires of us.

11 Number two, there should be no delay in beginning
12 discovery at this point in time. The cases were filed well
13 over a year ago. We survived extensive motion practice on
14 legal theories. We have an obligation to our clients to
15 prove the liability in this case in the same ways that
16 Mr. Mitchell and Mr. Webster describe their -- their
17 obligations to their clients to prove that our clients have
18 a right to be in front of the Court.

19 So we would ask that the discovery begin
20 immediately, that we be able to propound interrogatories,
21 requests to produce, as well as requests to admit. We've
22 gone back and forth on electronic storage information
23 protocols, which, as Mr. Mitchell probably knows based on
24 his extensive practice in this area, is commonplace, and we
25 see no reason to delay that at this point in time.

1 There's a reason why we can't do it before a motion
2 to dismiss, because at that point in time Your Honor may
3 have found our clients do not survive and do not have a
4 right to be in front of the Court, but at this stage Your
5 Honor has determined they have survived and that they do
6 have a right to be in front of the Court, and I see no
7 reason to delay discovery.

8 That said, that discovery should be consolidated for
9 purposes of liability, because it would not be okay under
10 any scenario for witnesses to be deposed more than once who
11 will provide the same information in case one as they would
12 in case five as they would in case --

13 THE COURT: Slow down. Slow down, Mr. Stern.

14 MR. STERN: So, for instance, if in fact there's a
15 notice of deposition on the governor of the state of
16 Mississippi, and there may be motions to quash the subpoena
17 because he's so busy, or perhaps the mayor is deposed or a
18 subpoena is issued or a notice of deposition is issued and
19 Mr. Mitchell raises a motion to quash because the mayor is
20 so busy. Assuming that we get to depose somebody on behalf
21 of one plaintiff, we should be deposing that person on
22 behalf of all of the plaintiffs. I think every counsel for
23 every defendant will agree on that.

24 What they won't agree with and what's at the heart
25 of this, I am imagining based on Mr. Mitchell's proposal

1 earlier is that they do not believe we should begin
2 undertaking that discovery until they have gotten -- and
3 I'll throw out the part about the aunties and the grandmas
4 and the moms and the teachers. Maybe we don't need to show
5 them what their noneconomic damages are, but I didn't hear
6 Mr. Mitchell say we don't need to have a neuropsych
7 evaluation. I didn't hear Mr. Mitchell say that we didn't
8 have to have a pediatric evaluation. I didn't hear
9 Mr. Mitchell say that we didn't have to have an economic
10 evaluation.

11 And what you're going to hear from them, I am
12 betting, is no discovery on liability should take place
13 until whatever process Your Honor institutes; *Lone Pine*
14 order, fact sheets, bellwether fact sheets, whatever the
15 decision is that's made, nothing happens until we know who
16 survives and has a right to be in front of the Court.

17 THE COURT: Well, let me ask you this: What
18 prediscovery disclosures has the plaintiff made? Because
19 I'm --

20 MR. STERN: We haven't undertaken --

21 THE COURT: Because you still have to do
22 prediscovery disclosures; right?

23 MR. STERN: We do, but we've been waiting on either
24 the magistrate or Your Honor to, I think, authorize us to
25 do that.

1 THE COURT: I'm just saying are you prepared to do
2 your predisclosure disclosures? Because I assume the
3 predisclosure disclosures will add some information to these
4 cases.

5 MR. STERN: Sure.

6 THE COURT: And are you ready to do predisclosure
7 disclosures --

8 MR. STERN: Yes.

9 THE COURT: Hold on. -- for the 2142 people who you
10 represent?

11 MR. STERN: Yes. Yes.

12 THE COURT: And after those disclosures are made, I
13 know you're not certainly ready to defend 2142 depositions
14 or sets of interrogatories for each of the plaintiffs. So,
15 again, what I'm trying to get to is a manageable set of
16 cases but also trying to track the information that's
17 required in each of these cases. And, you know -- and I
18 guess it's partly my fault because I'm just now having this
19 sort of hearing, but you all appear to be at an impasse
20 with respect to how you envision any of this case going
21 forward.

22 MR. STERN: It's an impasse the size of any of the
23 oceans, and it's the first that it's ever been -- it's the
24 first I've ever heard of this proposal.

25 THE COURT: Well, again --

1 MR. MITCHELL: Your Honor --

2 THE COURT: Go, Mr. Mitchell.

3 MR. MITCHELL: No, Your Honor. I interrupted you.

4 I apologize.

5 THE COURT: No, no. No, no. Go ahead. Go ahead.

6 MR. MITCHELL: So we -- when we submitted the
7 exemplar CMO to you, we didn't -- we didn't get to these
8 issues, Your Honor. We were trying to kind of work through
9 how we were going to consolidate the cases, how we were
10 going to have a master complaint and a master answer, and
11 how that process was going to work so that we could put a
12 structure to the case. And then we specifically said in
13 the case management order that -- the way it was drafted is
14 that we would get together and then we would talk about the
15 issues that we're beginning to talk about now and that if
16 we agreed, we would agree, and if we didn't, we would
17 submit our own position statements or potentially briefs.

18 So Mr. Stern is right in that we haven't had an
19 opportunity to go through these issues yet, because in fact
20 the way we structured the CMO is that was supposed to be
21 the next step. And so we're talking about a lot of things
22 that we have not discussed amongst -- with the plaintiffs'
23 counsel, so he's right.

24 But the case management order that is there,
25 standing apart from the discovery issues that are to come,

1 still is something that is kind of a prerequisite. It's
2 the consolidation of these cases. It's the master
3 complaint process. So if Mr. Stern needs to add additional
4 people later on, they will be -- they can be added through
5 a short-form complaint. It's the adoption of your order
6 that you've already entered to the cases that are all being
7 consolidated together.

8 We weren't that far apart on those issues. The
9 biggest disputes that I saw was the plaintiffs did not
10 desire for there to be individual case numbers. We do.
11 And the plaintiffs didn't think that we should be allowed
12 to continue to reserve our right to raise new defenses that
13 weren't in the motion to dismiss. We disagree with that.
14 We're not going to waive any rights to raise any defense
15 that we deem appropriate going forward. That doesn't mean
16 we're going to relitigate the issues you've already
17 decided, Your Honor. We want you to adopt that, but we're
18 not going to waive anything.

19 Those were the only two big issues with that order
20 that we submitted to you that were out there. And then we
21 were supposed to discuss all of these issues that we're
22 kind of going over on the phone now, how discovery's going
23 to go forward, and we knew there was going to be -- I knew
24 there was going to be disagreement, substantial.

25 But I think we can work -- still can work through

1 those, but we're not going to agree. I just think we're
2 going to have to submit those in the form of some sort of
3 motion for the courts, so that they're going to be able to
4 decide.

5 THE COURT: Mr. Stern, what's your major objection
6 to having each plaintiff with an individual number? What's
7 your -- 1, 2, 3, what's your major objection to each having
8 an individual number?

9 MR. STERN: It's not that I have an objection to
10 each of them being identified individually. It's that the
11 way it was described to me is that each one of them would
12 have their own case docket number, they would have their
13 own ECF number. That means that every one of them has
14 the -- if that's not burdensome on the Court and on the
15 parties in terms of keeping up with that, I don't know what
16 burdensome means. I mean, why not just have an Excel
17 spreadsheet that assigns them a number 1 through 2142 and
18 keep track of them that way and attach it as a master
19 exhibit to the consolidated case and that it can continue
20 to be updated as new cases are filed to the extent that
21 there's any new plaintiffs? But the idea of entering a new
22 docket number, a new case number on the docket in your
23 court for every single plaintiff seems like it's a poor use
24 of time, resources, and I don't really understand what the
25 purpose of it is.

1 THE COURT: Okay.

2 MR. STERN: If the purpose is for them to file
3 motions to dismiss in each and every one of those
4 2142 cases, then obviously I'm opposed to that. Obviously.

5 But what I'm hearing now is that that's going
6 to be efforted on the side of the defendants at this point.
7 They were unable to convince Your Honor under the law
8 that on a liability evaluation that they can get out of
9 this case on a motion to dismiss. But now they want --
10 before anything happens on liability, even though we've
11 already won that fight on some level, before we get to
12 liability, they want another chance to dismiss as many of
13 these cases as they can, because they're going to propose
14 an order to you requiring you to require us to do more than
15 what the law requires of us at this stage.

16 THE COURT: Assuming the Court --

17 MR. STERN: That's what I'm --

18 THE COURT: Wait, wait, wait, Mr. Stern. Assuming
19 the Court does not do that --

20 MR. STERN: Yes.

21 THE COURT: -- assuming the Court agrees that the
22 motion to dismiss phase is gone and now we're looking to
23 trying to get to a summary judgment phase, just because
24 each individual has a new number does not add any things on
25 the meat to the bones for a summary judgment motion. You

1 would agree; right?

2 MR. STERN: Then I have no issue with it, but I
3 think it can be more efficient than by each one having
4 their own case. I think that having -- I don't know how
5 many cases are currently pending in your district, but
6 adding 2,142 more for a limited purpose can easily be
7 accomplished in a more limited way, and it could be done
8 through an Excel spreadsheet. It could be done through a
9 Google spreadsheet that's shared amongst the parties that
10 the Court has access to. It doesn't have to be a new --
11 and I'm guessing that the clerk of court probably would
12 agree with that. I mean, imagine -- I don't know what kind
13 of --

14 THE COURT: You're about to hear from the clerk of
15 court.

16 MR. STERN: Okay.

17 THE COURT: And I don't think -- I'm not sure his
18 views are aligned directly, because we've been looking at
19 this from an operational point of view on our side
20 of the -- on this side of the ECF computer system or
21 whatever. And, of course, we've been thinking about --
22 because we're former lawyers, we've been thinking about
23 what it looks like on the attorneys' side as well. So I
24 have Mr. Johnston here.

25 Mr. Johnston, you ready to come to the podium to

1 help us out just a little bit to talk at least about that
2 particular issue?

3 MR. JOHNSTON: Little rusty, Your Honor.

4 THE COURT: I was about to say, remember, he hasn't
5 practiced -- he hasn't come to the podium as a lawyer in a
6 while, and he's never appeared before me. He doesn't know
7 what to expect; right, Ms. Pickett? He doesn't know what
8 to expect.

9 MR. JOHNSTON: I've been to the podium, Your Honor,
10 but it's usually to fix something that's gone wrong here.

11 THE COURT: Can everyone hear him? Yes? Okay.

12 Mr. Johnston, I know we've been talking about how we
13 may be able to manage these cases, at least if they're
14 severed, but severing also -- we need to make sure that if
15 they're severed, that it does not affect whatever rights
16 any of the parties have in this litigation: the rights of
17 the defendants, the rights of the plaintiffs. And I want
18 you to just share with them what we've been sort of trying
19 to figure out how this can work if it is severed.

20 MR. JOHNSTON: Your Honor, we have discussed that
21 and, you know, certainly if we sever out 2142 cases, that's
22 going to take a little time, going to take a little effort
23 on the part of the clerk's office, but it's nothing that we
24 can't handle. It would take a number of days to do it.

25 But our idea is largely -- again, speaking just from

1 a technical standpoint of clerk office operation, it's
2 largely like the paragraph D of the proposed case
3 management order articulates. We would create a master
4 case file. We would probably create a new master case file
5 with a new case number and then give the plaintiffs cases
6 each in series after that number and copy whatever case
7 your order provided for to be -- the pleadings to be copied
8 into a master file; and then in each individual case, I
9 presume we would open those cases with an order ordering
10 the cases to be severed. Maybe the primary complaint or
11 initial complaint; am I right?

12 And -- but then with direction in your order,
13 everything would be filed in the master case going forward,
14 unless a matter pertained to one individual plaintiff or
15 several individual plaintiffs, then those could be filed in
16 those individual cause numbers. But it is achievable with
17 a little effort.

18 THE COURT: And if we were -- I guess short of that,
19 I mean, if we don't do that, then if they're unsevered or
20 they're not redesignated in the way that we think -- or the
21 way that we envision it, then we will have these five cases
22 that we currently have that have been consolidated and
23 every pleading that is filed will be filed in one of
24 five -- in this one case, because it's been -- these
25 five --

1 MR. JOHNSTON: Consolidated.

2 THE COURT: They've already been consolidated, I
3 think.

4 MR. JOHNSTON: And I think there are two others that
5 have come in.

6 THE COURT: Okay. That's right. Two others have
7 come in, and we suspect that they will be consolidated at
8 some point because they've come in, as well as the 80 cases
9 that are out there that we've heard about today. When that
10 lawsuit is filed, then we'll be operating from one huge
11 file, I guess.

12 MR. JOHNSTON: That is correct. Our internal
13 discussions have centered around the idea that pretty much
14 everything would be filed in that master case number so
15 that you would avoid the kind of things that Mr. Stern was
16 talking about. And within that case, you know, we would
17 need to -- you could even file one pleading that pertained
18 to 20 of the individual cases but not all and file that
19 only in the master case, but we would have to have a
20 notation on that complaint or that pleading that reflected
21 the case numbers. And, again, we'd try to keep them in
22 series as much as we can, but for purposes of appeal, we
23 would need to be able to know, okay, we need to go flag
24 this motion from the master case if Ms. Williams's case is
25 taken up on appeal so that it pulls in for the appeal

1 record when it goes up.

2 So either could be accommodated, Judge. You could
3 either file separately in individual cases or you could
4 file a pleading in the master case and designate what cases
5 those would relate to. Am I right?

6 MS. STOKES: Correct.

7 THE COURT: And he's talking to the deputy clerks
8 when he says "am I right?" He's not talking to me, because
9 I don't know. Okay?

10 MR. JOHNSTON: And I don't either sometimes, Your
11 Honor, as you know, so that's why I have those here who do.

12 THE COURT: Right. For ease and efficiency purposes
13 for this court and for the -- you know, again, I don't want
14 the parties to feel like they're burdened.

15 And we have Mr. Weathersby here, who is our computer
16 sort of person on this ECF stuff. ECF was very, very new
17 right before I came over here, so I didn't get a chance to
18 be proficient in it, but on the lawyers' side of things in
19 making sure that pleadings are applicable to whatever, I
20 mean, how does that affect -- because I would not want the
21 attorneys' time and their offices' time to be overburdened.

22 We're about to spend -- if we sever these matters,
23 we're about to spend a significant amount of time on the
24 front end with our people here to get everything plugged
25 in, but how does that affect what might -- what the

1 attorneys might have to be doing on their side with respect
2 to entering documents, pleadings, order -- well, motions
3 and other things?

4 MR. JOHNSTON: Well, again, Your Honor, ideally and
5 preferably, from the clerk's office standpoint, all of
6 that, even if they only pertained to a certain group of the
7 individual cases, it would be preferable that that be filed
8 and taken care of in the master case number. But we
9 certainly could file -- have the attorneys file and the
10 clerk's office staff when there's an order file in the
11 individual cases.

12 There is a docketing function that MDL courts, I
13 believe, and other courts have used that we have not
14 activated in our court. It's called collect case numbers
15 multi, and we could turn that function on for the lawyers
16 if they wanted to file, you know, say, the same motion in
17 20 cases or 200 cases. We could enable that and probably
18 assist with that.

19 Unfortunately, because of some things that are going
20 on nationwide, we haven't been able to actually test that
21 function in our court. Because of some server changeover
22 that's happening nationwide, we don't have a test database
23 at the moment, but that functionality is out there, so we
24 think that would help the attorneys not have to file the
25 same pleading 500 times. That or simply filing those, even

1 though they only pertain to certain of the plaintiffs,
2 still in the master case, just in the document, the
3 pleading that's filed, designate what case numbers they
4 would pertain to, that particular filing would pertain to,
5 and then we can make a reference to each of those other
6 cases on the docket sheet.

7 Did I answer your question?

8 THE COURT: I think -- yeah, yeah, you did. Well,
9 let me -- I know this is the parties' first time hearing
10 any of that.

11 Does anyone have any particular question as we
12 consider -- as we think about -- again, my whole purpose is
13 to think about how we can get to the point to start to
14 jump-start these cases. And, again, you know, it may be
15 putting the cart before the horse because, as I said --
16 well, you do have to get a sort of order in place, and that
17 hasn't been done. And then we still have not discussed as
18 a group the potential of a special master and what role --

19 MR. STERN: I have --

20 THE COURT: -- if any, that person might play.

21 MR. STERN: I have a question.

22 MR. JOHNSTON: And let me add, Your Honor, that on
23 the -- if a special master is appointed, I think it makes
24 it easier to manage from the clerk's office perspective,
25 because I'm not so concerned about magistrate judge numbers

1 and dispositions.

2 THE COURT: Okay. Mr. Stern?

3 MR. STERN: May I ask one question? So if there's a
4 mechanism for and a need for filing one motion that by
5 hitting a button will file that same motion in 500
6 individual cases, why do we need 500 individual cases if
7 it's the same motion that applies to everybody?

8 I'm still not understanding what the need for 2142
9 individual case numbers is if we're going to be filing one
10 motion for everyone and then utilizing potentially new
11 technology to just file the same motion in 2100 cases.

12 MR. JOHNSTON: Now, that's not the way I understand
13 it. If the motion would apply to all the cases, it would
14 just be filed in the master case. But if it's a motion
15 that only applies to a certain number of plaintiffs, that's
16 a different matter, and I'm not here to debate the
17 rationale for it. I'm just telling you about the mechanics
18 of it, that it can be done. I don't -- I'm not -- I don't
19 have a dog in the hunt.

20 MR. STERN: I understand. I understand. Okay.
21 Thanks.

22 THE COURT: Again, I know you all have not been
23 given the opportunity to think about that as a possibility,
24 and you might have more questions --

25 MR. MITCHELL: Your Honor --

1 THE COURT: -- as you think about it.

2 But Mr. Mitchell?

3 MR. MITCHELL: Your Honor, what Mr. Jernigan *[sic]*
4 was talking about is -- is consistent with how a lot of the
5 MDL courts run their docket. I heard of what he's talking
6 about where if you have to file a motion, and it ultimately
7 applies to 20 plaintiffs, you can spread-file it, they call
8 it, in those 20 plaintiffs. That's kind of common in the
9 MDL world, and it works.

10 But I am more than happy to come and meet with a
11 representative from the plaintiffs' office and with
12 Mr. Webster and a representative from Trilogy with Mr. --
13 with the clerk and sit down and go through this, so that
14 there aren't any issues of confusion. Because I do think
15 we will have a more organized filing system and a more
16 organized docket if we do have separate places to file
17 individual information on individual plaintiffs.

18 THE COURT: Let me ask the parties this. It sounded
19 like one of the concerns is -- is that someone might be
20 losing their right to -- or would be giving up something if
21 a case has a number and there's no activity in that
22 particular case. Say, you know, it's 2142 and the parties
23 start working diligently on the first 100. How might that
24 affect the next 2,000? Or because there is no activity
25 going on in the next 2,000, is anybody harmed in any way?

1 You know, I'm not suggesting a stay as to the rest
2 of them, but certainly I don't think there's going to be
3 activity in -- well, I don't know. Maybe I need to hear
4 from the parties.

5 Do the parties believe that there ought to be
6 activity in all 2142 cases at the same time, or do you
7 think you ought to work on some in stages, or had you
8 thought about that?

9 MR. STERN: What I heard -- what I'm hearing from
10 the defendants, and, again, no one -- they have yet to
11 dispute that this is what they're saying, is that they want
12 to test the mettle of every plaintiff in each of these
13 individual cases before we do anything else in this case to
14 see who survives. So if I'm wrong about that, I would very
15 much appreciate it if one of the lawyers for the defendants
16 would say that I'm wrong, that that's not what the strategy
17 is or the theory is.

18 But if that is the theory, then I do expect that
19 there will be filings in every one of these cases, because
20 I'm hearing that they don't believe what's being pled in
21 the notice of claims, even though Your Honor reviewed that
22 on the motion to dismiss, and they want us -- despite how
23 minimalist they're describing it, they want us to do a lot
24 of things to first prove to them under an order that
25 they're going to ask you to enter that our clients actually

1 survive, and the only way to do that is through these
2 individual cases.

3 So I think the purpose of this is to be able to file
4 whatever they want to file in each and every one of those
5 cases. Otherwise, I don't know what the purpose is. And I
6 could be wrong, but I wish someone would tell me I'm wrong.

7 THE COURT: No. The purpose is for the benefit of
8 this court trying to keep track of the number of cases that
9 are filed in this district, that are disposed of.

10 One of the things that I don't want to do -- and,
11 again, the special master idea came up with me because the
12 burden, for example, that a magistrate judge -- because
13 this case is assigned to one magistrate judge right now,
14 and they will remain with one magistrate judge. It will
15 remain with one district judge. That the cases -- at the
16 end of the day, the magistrate judges have to work for, at
17 most, four or five other district judges. I guess
18 sometimes you work for all nine of us or ten of us, but
19 generally they're assigned to judges, and I don't -- and
20 one reason I decided to think about utilizing a special
21 master is to take off that burden on the magistrate judge
22 for one thing.

23 And then, you know, obviously this case will never
24 be disposed of until all 2142 cases are disposed of; right?
25 If it proceeds in a fashion where it is in one block.

1 Despite the fact that a magistrate judge might have worked
2 on 100 of these cases or a district judge might have worked
3 on 100 of these cases and closed 100 of them within a
4 24-month period, it doesn't matter. It doesn't show up as
5 having resolved or disposed of any case until all the cases
6 are gone if they all are tethered together under one
7 number. So we're thinking about things like that.

8 The other thing that I thought about today, and,
9 again, I'm throwing things at you all just like you all are
10 throwing things at each other. The other thing that I
11 thought about, you know, since we do have 2142 Jackson
12 citizens, Hinds County citizens, Jack- -- I guess Hinds
13 County, because Jackson's water system is operated
14 throughout the county, I think, even people outside of the
15 municipal area.

16 I have not gone through all 2,142 people. It may be
17 that I may be related to some of them. I may know some of
18 them. I may feel like I can't sit in judgment of their
19 particular case. You all may find that I can't sit. You
20 know, so we have to think about all of those things.

21 If it turns out in this 2142 cases it is somebody
22 who I have a familial relationship or some other
23 relationship, does that mean that this Court recuses from
24 the entire case or from that specific plaintiff? I don't
25 know. But, again, having them all segregated in some way,

1 it seems to me, makes even that a little bit easier to sort
2 of detect, and I just thought about that this morning.

3 So --

4 MR. STERN: Your Honor, if I could modify what I've
5 said, if the purpose of this is for the efficiency of the
6 clerk's office, if it's for purposes of efficiency for the
7 Court's docket so that the assignment of magistrates and
8 the easiness in which to identify who all these individuals
9 are for the reasons that you just stated or for other
10 reasons, I never want to be inefficient for the Court. I
11 clerked for a judge 21 years ago. I know what a pain in
12 the neck it is to deal with one case, let alone 2400 cases,
13 2100 --

14 THE COURT: You know what's kind of a pain in the
15 neck? To deal with a lot of lawyers? I'm just teasing.
16 I'm just teasing.

17 MR. STERN: But what I don't -- what I'm not in
18 favor of is creating an environment under the guise of
19 efficiency so that the defendants can file new motions to
20 dismiss after having lost, essentially, on the motions to
21 dismiss that were already filed and postponing liability
22 discovery while they do that so a determination can be made
23 for the second time if our clients' claims survive and if
24 they have a right to be here.

25 THE COURT: Okay. The parties --

1 MR. MITCHELL: Your Honor --

2 THE COURT: Hold on. Hold on. Hold on. In the --
3 I think the parties at least agree, do you not, that there
4 ought to be some minimal fact sheet at some point today,
5 right now.

6 MR. STERN: Some what? I'm sorry.

7 THE COURT: Some minimal fact sheet at this point,
8 even today, and that the fact sheet at least gets people
9 beyond -- gets parties beyond the motion to dismiss; right?

10 Haven't you all agreed that there ought to be some
11 fact sheets but maybe you have not agreed with -- agreed to
12 the detail of the fact sheets?

13 MR. STERN: I think we've said there should be fact
14 sheets, but the fact sheets for us are the -- the purpose
15 of a fact sheet is to form the basis of a bellwether system
16 and how to choose bellwether cases and how to provide
17 identifying information for the defendants. The way the
18 defendants apparently view the fact sheets is: How can we
19 determine if these plaintiffs survive enough to have
20 standing to be here?

21 And so we can agree that -- you know, that I'll eat
22 a potato and Mr. Mitchell will eat a potato, but if I'm
23 eating a potato for sustenance and he's eating a potato to
24 choke, the purpose behind the potato may change whether we
25 all agree that that's what we're going to eat. And so,

1 yes, we thi fact sheets are important so they can have more
2 information about our clients, not so that they can file
3 motions to dismiss in 2142 cases but so that it can help
4 form discovery, so that it can help choose bellwether
5 cases. So it's not as easy as we've all agreed to that,
6 because I am surprised -- again, I'm not blaming anybody,
7 but I thought we were going to be in a different place
8 today and that the disagreement we were going to have was a
9 different disagreement. I had no idea that this is what
10 Mr. Mitchell intended and what Mr. Webster intended.

11 THE COURT: Mr. Hawkins, did you want to say
12 something?

13 MR. HAWKINS: Your Honor, I was just going to say
14 that what I heard the Court say earlier was that you were
15 asking us to assume that the motion to dismiss phase is
16 over with and we're talking about now how to efficiently
17 manage the docket in this litigation, and that's what I
18 heard the Court say. And so rehashing this -- you know,
19 whether or not Your Honor wants to hear -- or wants
20 briefing on the *Lone Pine* issue or not, I don't know if
21 that's been determined, but that's another subject, I
22 guess, but -- but Your Honor asked us to assume the motion
23 to dismiss phase is over with for purposes of this
24 conversation, at least, and that we're moving into the
25 discovery phase and we're talking now about how to do that

1 efficiently. And so we all share the same objective, which
2 is to not overburden the Court or ourselves in trying to
3 get that done in an orderly fashion.

4 So I know the City's willing to do that. The
5 State's willing to do that. There may be disagreements
6 over exactly the wording of the fact sheets, whether or not
7 the fact sheets can be used for this purpose or that
8 purpose, but we agree we need fact sheets.

9 And so I would suggest -- and along the lines of
10 overburdening everybody, to echo something earlier,
11 Mr. Stern referenced me and us having a 30-second
12 conversation, and, Judge, I think you can take judicial
13 notice that neither of us, Mr. Stern or I, has either had a
14 30-second conversation or less with anybody, much less each
15 other. We've talked a couple of different times in this
16 case, and that was for the purpose of broaching the subject
17 of settlement, and while this insurance question was
18 discussed during that, as I think it should be in any
19 meaningful settlement discussion, I don't want to get into
20 the details of that, but I do want the Court to hear that
21 we've done what you asked us to do, which was at least
22 broach that subject. We're all here talking about a ton of
23 work that's got to be done by untold numbers of people in a
24 litigation that may last for years. We're talking about
25 how difficult it is logistically, and so I think it's

1 appropriate for us to have had that conversation early, and
2 I don't think Mr. Stern disagrees with that, but I want the
3 Court to hear that the city defendants made an effort.

4 THE COURT: Okay. Thank you, Mr. Hawkins. Not only
5 have that conversation early, have that conversation often,
6 at every phase of the litigation, is what I tell every
7 party who comes before me in every case, criminal and
8 civil, at every opportunity, even at the close -- even
9 after we get off this call. There have been new
10 developments, and parties need to always reevaluate where
11 they are any given day in this case.

12 I'm going to -- we're going to take about a
13 15-minute break. The court reporter has been going longer
14 than we have because she's been not having to pause while
15 we paused. Let's take a 15-minute break, and then I'll
16 come back and we'll close the loop on this discussion and
17 think about what our next steps are.

18 So we'll be in recess for 15 minutes.

19 (A brief recess was taken.)

20 THE COURT: I apologize. Is everyone back? Can you
21 hear me?

22 MR. MITCHELL: Yes, Your Honor.

23 THE COURT: Okay. Thank you.

24 We've been discussing sort of logistics here on this
25 end, again, trying to map out a process so that the cases

1 can start -- so that the case/cases can start moving, and I
2 guess the first step will be to sort of make sure we -- I
3 do what I need to do on this end for court purposes and get
4 some sort of order entered. That's the first thing.

5 Taking from what the parties have presented to each
6 other, I still encourage you all to talk, and hopefully we
7 can agree on what a particular order might look like.

8 MR. STERN: Judge, I'm sorry. I can't hear you.

9 THE COURT: Okay. Now can you hear me? Now can you
10 hear me?

11 MR. STERN: Yes, Your Honor.

12 THE COURT: Okay. You know, it's incumbent upon me
13 first to try to -- I'm trying to get these cases moving in
14 some way. Case, as I said earlier case/cases, whatever
15 form that they are ultimately going to be in. So the first
16 thing I should do is try to get an order entered on what
17 this might look like, what this is, taking from what the
18 parties have already provided to me. And it may call for
19 us having a second hearing or a second status conference to
20 make sure all the loose ends are tied up for us, because I
21 want as much input from the lawyers as I can get, I mean,
22 because I want all of us to be comfortable with the
23 process. That's number one.

24 Then after an order is entered, obviously the
25 parties will get before the magistrate judge to sort of

1 start the process. But, of course, I did ask the parties
2 to submit to me names of special masters and all. I do
3 intend -- because of the nature of this case, the number of
4 claims, the number of plaintiffs, I cannot see going
5 forward without a special master, frankly. And -- you
6 know, and then that person will need to know what our
7 process is and become familiar with that process, and we'll
8 deal with that.

9 I'm going to give myself about 30 days or so to
10 enter an order. Now, I did hear Mr. Mitchell suggest or at
11 least say, look, Judge, if there is some confusion on our
12 end or if we need to sit down with representatives from the
13 clerk's office, designees from the parties -- Mr. Stern,
14 I'm not suggesting that you make a trip down to Jackson
15 unless you're already here signing up more plaintiffs. I'm
16 not suggesting that you have to come in.

17 But if the parties believe that they need to come in
18 and sit down with members of the clerk's team, coordinate
19 your schedules and do so. Contact Mr. Johnston or either
20 Porfi Stokes, who's our senior case management -- our
21 deputy clerk. She's on the Coast, but her information is
22 on the website. Contact -- if the parties agree that you
23 need to come in, please do so, because, again, it's
24 incumbent for us to do -- what I believe to do this right
25 on the front end no matter which direction the Court goes.

1 But I will tell you I'm inclined to sever these
2 cases in some way to have sufficient separateness for
3 identification purposes only. I hear you, Mr. Stern, and I
4 hear the other parties. I don't see separate numbers as a
5 license for persons to explode in 2142 different types of
6 discovery and all of that moving all at the same time.

7 Whether we identify cases on the front end as to
8 those which might be subject to some sort of discovery or
9 we do it after fact sheets are done, I need the parties to
10 help me to be thinking about that, because I want this to
11 be manageable. I want it to be controllable, and I want it
12 to be efficient and not overburdensome and not expensive
13 for anybody.

14 So I'm thinking -- you know, so if there's language
15 in an order that everybody can agree to that caps the
16 number of cases, identify the number of cases, or identify
17 the particular cases, what type of discovery might go
18 forward, whether it's written in all of them or a portion
19 of them and depositions of some or all, I want us to be
20 thinking about that to try to get it -- again, to not be
21 overly burdensome, to be efficient, be inexpensive, and to
22 be manageable and all of those things, because at the end
23 of the day, when the cases are ready for trial, I still
24 don't see us trying -- having a trial here in this court
25 for more than eight or ten people.

1 Mr. Stern, how many -- I don't know how many y'all
2 tried in Flint that took eight or nine months to do in that
3 case. Was -- but what number was it? Do you recall,
4 Mr. Stern?

5 MR. STERN: It was four children, and it was
6 about -- with jury deliberations, it was seven months.

7 THE COURT: Right. So I don't see us trying --
8 having a trial -- again, I said eight, ten, or 12. You
9 know, I just don't see us being able to have a trial of
10 more than a few people at one time anyway, and so -- but we
11 do need to move this case to get to what is the appropriate
12 number for a trial, at least.

13 MR. STERN: Your Honor, just so you know, next trial
14 for the bellwether -- the next bellwether trial will be
15 eight children -- or actually seven children of our
16 clients. And unlike the first trial, in the second trial,
17 there will be time limits placed on the parties. And so
18 not only was that first trial a bellwether for the
19 litigation, but it was certainly a bellwether for the
20 parties in terms of what worked and what didn't work. So I
21 think there will be more evidence of what may or may not
22 work prior to this case -- any of these cases or five of
23 these cases ever getting to trial, because that next trial
24 will be next year.

25 THE COURT: 2024. What month does it start? Do you

1 know?

2 MR. STERN: It's a little debate -- as of now, it's
3 for February. But there's an issues class trial that's
4 supposed to take place in February, and if the February
5 trial does not happen, ours very well might move up sooner.

6 THE COURT: Okay. All right.

7 MR. STERN: We're preparing for it as if it's going
8 in February, but it could be October.

9 THE COURT: Okay. Yeah. So, again, I'm going to
10 take what you all have prepared -- or submitted to me back
11 in May, and I hope to fashion out an order -- I'm giving
12 myself another 30 days to sort of do that, and I'm asking
13 you all if you wanted to -- if you want to talk to the
14 clerk's office about -- as a group about what this
15 severance sort of thing that the Court is imagining -- I'm
16 telling you I am thinking about individual numbers; I'll be
17 clearly up front about that.

18 Please contact Mr. Johnston or Ms. Stokes to see
19 about an agreeable time where a representative from -- or
20 for whoever wants to come can sit down and meet with the
21 clerk's office to allay any concerns that one might have on
22 how this might work with this court or with you all.

23 And, again, the special master thing is on the table
24 for me to consider next, and then we will go from there I
25 think. I know the parties have a real interest in trying

1 to move this case along, and I want to assist you in doing
2 that.

3 Is there anything else we need to take up at this
4 time?

5 MR. MITCHELL: Your Honor, this is Meade Mitchell.

6 I had just a point of clarification. So the issues
7 that we presented to the Court in our letters in May did
8 not delve into what you have heard are pretty serious
9 issues of dispute about how the discovery should proceed.
10 They were how the case should be severed, how the master
11 complaint should work. And what I want to be sure of is
12 that you haven't received any sort of position papers from
13 Mr. Stern or from Mr. Webster or from me on how that would
14 work or anything about *Lone Pine*.

15 I wanted to make sure that you did not want that at
16 this point, that you were going to be addressing the issues
17 that were on the table in that case management order.
18 Because if you do, we can obviously submit it, but I wanted
19 to be sure you did not want that right now.

20 THE COURT: No, I don't think I need that right now.
21 I think what I want to do is deal with what's before me,
22 how fact sheets might look, and all of that.

23 If it becomes necessary for me in fashioning out
24 what I'm going to do to open up these cases after they've
25 been consolidated, I'll let you know.

1 MR. MITCHELL: Thank you, Your Honor. And one other
2 question. We have all submitted names of special masters
3 for your consideration. None of us have submitted anything
4 to the Court about who we might have a problem with. I
5 don't know that Mr. Stern may have a problem with some of
6 ours, and we may have a problem with some of his. I don't
7 know whether you want us to submit any sort of information
8 on that to you or whether you would just like us to wait
9 until you've had a chance to digest that issue more.

10 THE COURT: We could wait. We could wait. We may
11 have a separate sort of hearing, if you will, on the -- on
12 who this Court might appoint special master.

13 Is there anything else? Anything else anyone else
14 wishes to take up or say?

15 All right. Counsel, thank you so --

16 MR. STERN: Your Honor?

17 THE COURT: Oh.

18 MR. STERN: Oh, sorry.

19 THE COURT: Mr. Stern, go ahead.

20 MR. STERN: In certain instances when it comes to a
21 special master, what I've seen courts do is provide a
22 notice to the parties of the Court's intent to appoint a
23 special master and has asked the parties for either a
24 position -- to take a position on the appointment in
25 advance of it actually being made. Obviously there's a

1 bunch of ways that can be done, but that's one way that
2 doesn't require us to make affirmative statements or have
3 us just filing a bunch of things on the record about
4 individuals who's made this parts of their careers but at
5 the same time indicates where Your Honor is headed but
6 gives us the opportunity to weigh in on somebody
7 specifically.

8 THE COURT: I'll give you that opportunity.

9 MR. STERN: Okay. Thank you, Judge.

10 MR. MITCHELL: Thank you, Your Honor.

11 THE COURT: Anything else?

12 Counsel, thank you so much for making yourselves
13 available for this call, and I appreciate your willingness
14 to work with the Court on this. This is all that the Court
15 has for today.

16 The Court is now adjourned.

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CERTIFICATE OF COURT REPORTER

I, Candice S. Crane, Official Court Reporter for
the United States District Court for the Southern District
of Mississippi, do hereby certify that the above and
foregoing pages contain a full, true, and correct
transcript of the proceedings had in the forenamed case at
the time and place indicated, which proceedings were
stenographically recorded by me to the best of my skill and
ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

14 THIS, the 13th day of September, 2023.

/s/ Candice S. Crane, RPR RCR CCR

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